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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TUNG, PETER P

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/441,055	Applicant(s) Usuda et al.
Examiner Peter Tung	Art Unit 1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on \_\_\_\_\_.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 12-40 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 12-40 are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 12-20, drawn to a method for producing methionine using a microorganism deficient in a repressor of methionine biosynthesis, classified in class 435, subclass 113.
  - II. Claims 21-30, drawn to a method for producing methionine using a microorganism with enhanced homoserine transsuccinylase activity, classified in class 435, subclass 113.
  - III. Claims 31-40, drawn to a method for producing methionine using a microorganism deficient in a repressor of methionine biosynthesis and has enhanced homoserine transsuccinylase activity, classified in class 435, subclass 113.
2. The inventions are distinct, each from the other because of the following reasons:

Each of Groups I, II and III is directed to a separate and distinct invention. Group I is directed to a method of producing methionine using a microorganism deficient in a repressor of methionine biosynthesis, Group II is directed to a method of producing methionine using a microorganism with enhanced homoserine transsuccinylase activity and Group III is directed to a method of producing methionine using a microorganism deficient in a repressor of methionine biosynthesis. These methods are distinct as the microorganisms used in these methods are

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structurally and functionally distinct. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. This application contains claims directed to the following patentably distinct species of the claimed invention: a) exhibits reduced intracellular S-adenosylmethionine synthetase activity, b) exhibits L-threonine auxotrophy, c) exhibits enhanced intracellular cystathione  $\gamma$ -synthase and aspartokinase-homoserine dehydrogenase II activity, d) has a homoserine transsuccinylase for which concerted inhibition by L-methionine and S-adenosylmethionine is desensitized.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 12, 21 and 31 are generic.

Upon the election of one of the three groups and a species election, the claims of the elected Group will be examined only to the extent of the elected species.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations

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of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Tung, Ph.D. whose telephone number is (703) 308-9436. The examiner can normally be reached on Monday-Friday from 9:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D., can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



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